

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a left knee condition causally related to the accepted December 6, 2017 employment incident.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On January 12, 2018 appellant, then a 53-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 6, 2017 she injured her left knee while in the performance of duty. She explained that she was walking into the breakroom in order to fill a water bottle and when she put her foot down on the floor, her shoe did not move while the rest of her body continued in motion and rotated to the right. Appellant noted that she heard a loud pop in her left knee and felt unbearable pain and a burning sensation. She did not stop work.

In a development letter dated January 26, 2018, OWCP informed appellant of the deficiencies of her claim and advised her of the type of factual and medical evidence necessary to establish her claim. It provided a questionnaire for her completion and also requested that she submit a narrative medical report from her treating physician, which provided a diagnosis and the physician's rationalized medical explanation as to how the alleged employment incident caused the diagnosed condition. OWCP afforded appellant 30 days to submit the necessary evidence.

Appellant replied to OWCP's development questionnaire and submitted medical evidence.

By decision dated March 5, 2018, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between her medical condition and the accepted employment incident.

On March 15, 2018 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated October 4, 2018, OWCP's hearing representative affirmed the March 5, 2018 decision.

On April 17, 2019 appellant, through counsel, requested reconsideration of OWCP's October 4, 2018 decision.

In a March 22, 2019 narrative medical report, appellant's attending physician, Dr. Andrew Beharrie, a Board-certified orthopedic surgeon, explained that degenerative meniscus tears are very common in the setting of osteoarthritis of the knee. He noted that, as osteoarthritis progresses, the contact pressure in the joint increases and the increased pressure results in greater stresses on the meniscus as the quality and strength of the tissue in the meniscus diminishes with age. As a

³ Docket No. 19-1596 (issued April 23, 2020).

result of these factors, patients with arthritis are more likely to develop a degenerative meniscus tear because the meniscus is more susceptible to damage. Dr. Beharrie further explained that, prior to her injury, appellant had preexisting arthritis of her knee, but was asymptomatic although she may have also had preexisting degenerative meniscus tears. The twisting injury to her knee caused significant force across her arthritic joint and this likely resulted in an acute meniscus tear or worsening of a preexisting tear. Additionally, Dr. Beharrie explained that appellant's injury may have caused a new tear in a previously intact meniscus or resulted in a progression of preexisting tear. He also noted that the injury caused a flare up of inflammation in her knee, which resulted in aggravation of her baseline arthritis and associated meniscus tear.

By decision dated April 23, 2019, OWCP denied modification of the October 4, 2018 decision.

On July 22, 2019 appellant, through counsel, filed an appeal with the Board. By decision dated April 23, 2020,⁴ the Board found that Dr. Beharrie's March 22, 2019 report was sufficient to require additional development and remanded the case for OWCP to refer appellant, a statement of accepted facts (SOAF), and the medical evidence of record to a district medical adviser (DMA) or an appropriate Board-certified physician for a rationalized opinion addressing whether the diagnosed left knee conditions are causally related to the accepted December 6, 2017 employment incident and a *de novo* decision.

On July 15, 2020 OWCP referred appellant, a SOAF, and a series of questions to Dr. Stephen Koss, a Board-certified orthopedic surgeon, for a second opinion evaluation.

In a report dated August 21, 2020, Dr. Koss reviewed the SOAF, provided appellant's history of injury, and performed a physical examination. He found full extension and approximately 95 degrees of flexion of the left knee at which point appellant reported discomfort and refused to flex the knee further. Appellant exhibited only 85 degrees of flexion of the right knee due to pain. Dr. Koss found bilateral knee osteoarthritis with no difference on examination between the injured left knee and the non-injured right knee. He opined that appellant's current bilateral knee pain and stiffness was degenerative and chronic in nature and not related to the accepted employment incident. Dr. Koss further reviewed a left knee magnetic resonance imaging (MRI) scan and found chronic degenerative changes with a degenerative tear in the meniscus. He noted that it was common to develop meniscal tears in arthritic knees and that these tears were degenerative in nature and not related to any acute injury. Dr. Koss determined that appellant had not sustained a significant aggravation of a preexisting condition and disagreed with Dr. Beharrie. He concluded that she could return to work with no "significant" restrictions related to her work injury and that she did not require additional medical treatment due to her accepted employment injury.

By decision dated December 17, 2020, OWCP denied appellant's claim finding that the medical evidence of record did not establish causal relationship between her accepted December 6, 2017 employment incident and her diagnosed conditions.

⁴ *Id.*

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,⁶ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁷ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁸

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established.⁹ There are two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.¹⁰ The second component is whether the employment incident caused a personal injury.¹¹

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹² A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment incident must be based on a complete factual and medical background.¹³ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition, and appellant's specific employment incident.¹⁴

Section 8123(a) of FECA provides that, if there is a disagreement between the physician making the examination for the United States and the physician of an employee, the Secretary shall appoint a third physician (known as a referee physician or impartial medical specialist) who shall

⁵ *Supra* note 2.

⁶ *M.G.*, Docket No. 19-1860 (issued March 15, 2021); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁸ *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁹ *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

¹⁰ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹¹ *E.M.*, *id.*; *John J. Carlone*, 41 ECAB 354 (1989).

¹² *S.S.*, *supra* note 9; *Robert G. Morris*, 48 ECAB 238 (1996).

¹³ *C.F.*, Docket No. 18-0791 (issued February 26, 2019); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁴ *Id.*

make an examination.¹⁵ This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.¹⁶ When there exists opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹⁷

ANALYSIS

The Board finds that this case is not in posture for decision.

Dr. Beharrie, appellant's treating physician, found that she had preexisting arthritis in her left knee, that she may have had a preexisting degenerative meniscus tear, but that the accepted December 6, 2017 employment incident where she twisted her left knee caused significant force across her arthritic joint that likely resulted in an acute meniscus injury or the worsening of a preexisting tear. He also attributed aggravation of her left knee arthritis and associated meniscus tear to the inflammation of her left knee to the accepted employment incident.

By contrast, Dr. Koss a second opinion physician, opined in his August 21, 2020 report that appellant had no disabling residuals of any condition associated with her current claim, rather her ongoing conditions were due to her preexisting bilateral knee osteoarthritis. He further noted that it was common to develop meniscal tears in arthritic knees and that these tears were degenerative in nature and not related to any acute injury. Dr. Koss determined that she had not sustained a significant aggravation of a preexisting condition and disagreed with Dr. Beharrie. He concluded that appellant had no employment-related disability or residuals.

Dr. Beharrie provided a description of how the accepted employment incident caused or contributed to the diagnosed left knee meniscal tear. Dr. Koss, however, opined that there was no causal relationship between the accepted employment incident and appellant's degenerative left knee condition. The Board, therefore, finds that a conflict in medical opinion exists regarding whether she sustained a left knee injury as a result of the accepted December 6, 2017 employment incident.

OWCP's regulations provide that, if a conflict exists between the medical opinion of the employee's physicians and the medical opinion of a second-opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination.¹⁸ The Board will, thus, remand the case to OWCP for referral to an impartial medical specialist regarding whether

¹⁵ 5 U.S.C. § 8123(a); *M.W.*, Docket No. 19-1347 (issued December 5, 2019); *C.T.*, Docket No. 19-0508 (issued September 5, 2019); *R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009).

¹⁶ 20 C.F.R. § 10.321.

¹⁷ *M.W.*, *supra* note 15; *C.T.*, *supra* note 15; *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

¹⁸ 5 U.S.C. § 8123(a); *M.W.*, *supra* note 15.

appellant has met her burden of proof to establish that she sustained a left knee injury causally related to the accepted employment incident.¹⁹ Following this and any such further development as may be deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the December 17, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: January 11, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹⁹ *Id.*